

Applicants: Jerry S. Brown *et al.*
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REMARKS

Claims 16-18 and 23-30 are pending in this application. By this Amendment, claims 21-22 are cancelled without prejudice to or disclaimer of the subject matter contained therein, and claims 16, 17 and 30 are amended. In particular, claim 16 is amended to recite features supported in the specification at, for example, page 5, lines 2-7 and page 13, lines 3-8 (corresponding to paragraphs [0013] and [0030] of U.S. Patent Application Publication 2005/0059566) and incorporated from claims 17 and 30, which are amended for consistency. No new matter is added by any of these amendments. The Amendments After Final Rejection previously filed January 3, 2006 and February 3, 2006 are not entered based on the January 13, 2006 Advisory Action and the February 10, 2006 telephone interview, respectively.

Claims 1-15, 19 and 20 were previously withdrawn from consideration as being drawn to a non-elected Group and subsequently cancelled. Reconsideration based on the following remarks is respectfully requested.

I. Amendment Entry with Request for Continued Examination

Entry of this amendment is proper under 37 CFR §1.114 because this Submission is filed in conjunction with a Request for Continued Examination (RCE).

II. Telephone Interview

Applicants appreciate the courtesies extended to Applicants' representative by Examiner Anthony during the February 10, 2006 telephone interview. In accordance with MPEP §713.04, the points discussed during the interview The reasons presented at the interview as warranting favorable action are incorporated in the remarks below and constitute Applicants' record of the interview.

The Examiner stated that the February 3, 2006 Amendment would not be entered and indicated that a supplemental Advisory Action would be forthcoming. He further stated that the specification did not support recitation in claim 16 of the term "paracetyl borate", and that the teachings in U.S. Patent 5,462,692 to Roesler *et al.* ("Roesler") suggest biological warfare application.

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The Examiner suggested correcting the unsupported term to --peracetyl borate-- and to change the non-entered phrase "chemical or biological warfare agent" to --chemical warfare agent--. The Examiner also stated that such an amendment would necessitate submission with an RCE under 37 CFR §1.114.

III. Obviousness Rejection under 35 U.S.C. §103

The Final Office Action rejects claims 16-18 and 21-30 as being allegedly obvious under 35 U.S.C. §103(a) over Baugh in view of U.S. Patent 6,369,288 to Brown and rejects claims 17, 21, 22 and 30 as being allegedly obvious under 35 U.S.C. §103(a) over U.S. Patent 6,656,919 to Baugh *et al.* ("Baugh") in view of Brown and further in view of Roesler. These rejections are rendered moot with respect to claims 21 and 22, and are respectfully traversed with respect to the remaining claims.

Applicants' claims are directed to, for example, a method for decontaminating a chemical warfare agent by a microemulsion composition. In particular, independent claim 16 recites, *inter alia*, "providing a microemulsion composition having a microemulsion, peracetyl borate a solid source of peroxy-carboxylic acid dissolved in the microemulsion and a germinant in combination with the solid peroxy-carboxylic acid within the microemulsion."

Applicants respectfully submit that Baugh and Brown, alone or in combination, do not describe or suggest peracetyl borate, and that Roesler fails to compensate for this deficiency in the application of chemical warfare. This argument also applies to claims 17, 18 and 23-30 based on their dependence from claim 16.

Instead, Baugh discloses a method for rendering bacterial endospores harmless by activation to germinate and convert the endospores to vegetative cells with subsequent application of a germicide to kill the vegetative cells. In particular, Baugh teaches germinating the endospores by sublethal heating or by adding a germinant. See, *e.g.*, col. 6, lines 23-34; col. 7, lines 24-37 of Baugh. Further, Baugh teaches vegetative germicides, such as phenolics, halogens, alcohols, heavy metals, quaternary ammonium salts, organic acids, aldehydes, gaseous chemosterilizers and oxidizing agents. See, *e.g.*, col. 8, lines 25-36 of Baugh. Additionally, Baugh teaches application of a surfactant to germicides. See, *e.g.*, col. 10, line 60 – col. 11, line 11 of Baugh.

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As admitted in the Final Office Action at page 4, however, Baugh fails to teach peracetyl borate for its source of peroxycarboxylic acid. Applicants assert that Brown and Roesler do not compensate for this deficiency.

Specifically, Brown discloses a method for applying a decontamination solution to neutralize a chemical and/or biological warfare agent, such as peroxycarboxylic acid. In particular, Brown teaches generating the agent by mixing a peroxygen compound, such as hydrogen peroxide, with bleach. See, *e.g.*, col. 2, lines 35-54; col. 3, lines 4-13 of Brown. There is no teaching or suggestion in Brown for including peracetyl borate as the peroxycarboxylic acid.

Further, Roesler does not compensate for the deficiencies of Baugh and Brown in connection with chemical warfare. Instead, Roesler is directed providing peracetic acid in the form of solid acetyl peroxborate compounds for cleaning applications, *e.g.*, detergent, cleaning agent, bleaching agent, disinfectant compositions, and as an oxidizing agent in organic synthesis. See *e.g.*, col. 4, lines 17-35 of Roesler. In particular, Roesler discloses chemical structures derived from acetyl groups, oxygen and borate. See, *e.g.*, col. 3, lines 11-41 of Roesler.

Cleansing operations, which Roesler addresses, are distinguishable from chemical warfare agent decontamination, as provided in Applicants' claims and in teachings by Baugh and Brown. Thus, an artisan of ordinary skill would not have been motivated to incorporate peracetyl borate production from Roesler for detergent to decontaminating chemical agents absent hindsight from Applicants' disclosure.

A *prima facie* case of obviousness for a §103 rejection requires satisfaction of, *inter alia*, that there must be some suggestion or motivation either in the references or knowledge generally available to modify the references or combine reference teachings, and a reasonable expectation of success. See MPEP §706.02(j).

Because Roesler has separate and distinct applications distinguishable from Baugh and Brown, and thereby no expectation that Roesler's teachings could be successfully applied to either Baugh or Brown to achieve chemical weapons agent decontamination. Applicants submit that the Final Office Action does not satisfy these requirements with Baugh, Brown and Roesler in view of the amendments.

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For at least these reasons, Applicants respectfully assert that the independent claim is patentable over the applied references. The dependent claims are likewise patentable over the applied references for at least the reasons discussed, as well as for the additional features they recite. Consequently, all the claims are in condition for allowance. Thus, Applicants respectfully request that the rejections under 35 U.S.C. §103 be withdrawn.

IV. Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully submit that this application is in condition for allowance. Favorable reconsideration and prompt allowance are earnestly solicited.

Should the Examiner believe that anything further is desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

Respectfully submitted,



Gerhard W. Thielman
Registration No. 43,186

Date: February 14, 2006

Attachments:

Petition for Extension of Time
Request for Continued Examination

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